IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 4635 of 2007(B)

PETITIONER:

THE SENIOR MANAGER,
UNION BANK OF INDIA, KOLLAM BRANCH,
FATHIMA BUILDING, P.B.NO.182,
BEACH ROAD, KOLLAM.

BY ADV. SRI.A.S.P.KURUP, SC, UBI
SRI.SADCHITH.P.KURUP

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
COLLECTORATE, KOLLAM.

2. R. DHANALAKSHMI, PROPRIETRIX,
SEEMATTIL TEXTILES, KOLLAM.

3. RAMACHANDRA REDDIAR,
DHANAM, CURZON ROAD, KOLLAM.

4. R. VEERESH KUMAR, DHANAMAS
CURZON ROAD, KOLLAM.

5. R. ANANTHAKUMAR, DHANAMS
CRUZON ROAD, KOLLAM.

6. M. SHAHID AHMED, CHANDRALAYAM,
NELLIMUKKU, KOLLAM-12.

7. RAJAMMAL, CHANDRALAYAM,
NELLIMUKKU, KOLLAM-12.

**8. DR.MUMTAZ YUSUF, CHANDRALAYAM,
NELLIMUKKU, KOLLAM-12.**

**BY ADV. SRI.B.KRISHNAMANI ---R5
SRI.T.R.RAJAN
GOVERNMENT PLEADER SRT. ANU SIVARAMAN**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 4635/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE JUDGMENT DT. 29/09/06 PASSED IN WPC NO. 24839/2006.

EXT.P2. COPY OF THE JUDGMENT DT. 18/10/06 IN WA NO. 1802/2006.

EXT.P3. COPY OF THE APPLICATION DT. 28/10/06 GIVEN BY PETITIONER TO R1.

EXT.P4. COPY OF THE COMMUNICATION DT. 3/11/06 TO TAHSILDAR, KOLLAM BY R1.

EXT.P5. COPY OF THE REPRESENTATION DT. 31/1/2007 FILED BY THE PETITIONER TO R1.

RESPONDENT'S EXHIBITS

EXT.R5. COPY OF THE APPLICATION DT. 6/1/2003 FILED BY THE OFFICIAL RECEIVER.

EXT.R5A. COPY OF THE ORDER DT. 7/1/2003.

True copy

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.4635 of 2007-B & I.A.4188/2007

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Dated this the 16th day of March, 2007.

JUDGMENT

Heard counsel.

2. Having regard to the nature of the directions being issued hereunder, notice to the unserved respondents is dispensed with.

3. This is a writ petition by a creditor Bank seeking a direction to the first respondent District Collector to take appropriate action on Ext.P3, a statutory petition filed under Sub-sections (1) and (2) of Section 14 of the SARFAESI Act.

4. Respondents 2 to 5, who are the debtors, moved Ext.P1 writ petition and obtained an order by which they

were enabled by this Court to pay off the outstandings and avert further action under the SARFAESI Act. Their challenge against the terms therein was repelled by the Division Bench as per Ext.P2 judgment.

5. Respondents 6 to 8 are the purchasers of the property under the SARFAESI auction.

6. The learned counsel for the fifth respondent submits that the property has been sold off by the Bank for a throw way price and that the documents and other records available with the fifth respondent would demonstrate that the Bank did not even take into consideration the valuation earlier taken by the Bank. It is also stated by the learned counsel for the fifth respondent that respondents 6 to 8 have not paid the entire consideration due to the Bank for the sale. The learned counsel for the fifth respondent further submits that the legality of the sale in issue is subject-matter before the DRT on an application by the debtors and that as per Exts.R5 and R5 (a), certain restrain orders have been issued in I.P.3/1100 M.E. Regarding effecting mutation etc.

7. I.A.No.4188/2007 is filed by one G.Vinod for impleading him as additional respondent, claiming that he is a tenant of a portion of the building in question and that he has obtained interlocutory order of eviction ex parte the third respondent herein. He accordingly seeks that he may not be dispossessed under the SARFAESI Act. Impleadment is allowed.

8. As already noticed, the Bank, as of now, has sought for a direction to the District Collector to proceed with Ext.P3 statutory application under Section 14(1) and (2) of the SARFAESI Act. The responsibility of the District Collector to proceed with that application is statutory. Such duty can be interfered only by competent statutory authority under that Act. As of now, the matter is pending before the DRT and it is not brought to my notice that the DRT has passed any order interdicting further action under Sub-sections (1) and (2) of Section 14 of the SARFAESI Act. It is also mentioned by the learned counsel for respondents 6 to 8 that such request was rejected by the DRT.

9. The valuation for the sale etc. are matters that would gain attention only of the DRT and are not matters for the writ court to consider. At any rate, the request of the Bank is only for a direction to the District Collector to proceed with further statutory action under the Act. Under such circumstances, I do not find any ground to refuse relief sought for by the Bank, to direct the District Collector to take further action in terms of Ext.P3 application.

10. In so far as the application of the impleaded respondent is concerned, there is no prohibitory order either against the Bank or the District Collector or any statutory authority under the SARFAESI Act from proceeding with due action. In the scheme of the SARFAESI Act, such binding orders by civil court also are not permissible. The mere fact that the impleaded respondent has obtained an ex parte interlocutory order on the 8th of March, 2007 against one of the debtors, namely, the third respondent, is no ground to deter proceedings for eviction.

For the foregoing reasons, this writ petition is allowed directing the first respondent District Collector to proceed with further action on the basis of Ext.P3 in accordance with law.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-